UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,497	03/23/2004	Kenichi Shimazaki	1122.70096	3046

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EXAMINER
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ART UNIT	PAPER NUMBER
2857	

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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>23 March 2004</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-12</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-12</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>23 March 2004</u> is/are: a)☐ accepted or b)☒ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Drawings

1.   The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5)

because they include the following reference character(s) not mentioned in the

description: S40. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or

amendment to the specification to add the reference character(s) in the description in

compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid

abandonment of the application. Any amended replacement drawing sheet should

include all of the figures appearing on the immediate prior version of the sheet, even if

only one figure is being amended. Each drawing sheet submitted after the filing date of

an application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next

Office action. The objection to the drawings will not be held in abeyance.

Specification

2.   The disclosure is objected to because of the following informalities: The first line

of paragraph [0006] written "As for these related art of" should be changed to – As for

the related art of --.

3.   The brief description of "FIG. 3" should be written as -- FIG. 3A and 3B --.

4.   Paragraph [0022] line 11, written "The computer system 10 as the monitoring

subject is connected to the load" should be changed to -- The computer system 10, as

the monitoring subject, is connected to the load --.

5.   Paragraph [0026] line 8, written "Here, to analyses and accumulate" should be

changed to – Here, to analyze and accumulate --.

6.   Paragraph [0030] line 2, written "parameter (steps S17)." should be changed to –

parameter (step S17). –

7.   Paragraph [0073] line 3, written "and 9 are separately" should be changed to –

and 9) are separately --.

        Appropriate correction is required.

Claim Rejections - 35 USC § 112

8.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

9.   Claims 2, 3, 6, 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as

being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention.

10.   With respect to claims 2 and 3 (pg 25, ln 1-4), it is unclear whether only the

physical limitation of the resource is limited by being based on the results of measuring

the resource situation, or if the marginal performance, predicted value, measured

response, and throughput are also limited by being based on the results of measuring

the resource situation.

11.   With respect to claims 2, 3, 6, 8 and 9, the term "monitoring item" is used in the

claims to mean "the item being monitored", while the accepted meaning is "the item

doing the monitoring."

Claim Rejections - 35 USC § 102

12.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13.   Claims 1, 2, 4, 5, 7, 8, and 10-12 are rejected under 35 U.S.C. 102(e) as being

anticipated by Smocha et al. (US Patent 6,694,288) (hereinafter "Smocha").

With respect to claims 1, 7 and 11, Smocha teaches a load monitoring condition

determination method for determining a load monitoring condition for performing load

monitoring of a computer system comprised of one computer or a plurality of computers

(col 3, ln 8-32), wherein the method comprises the steps of:

giving a load to the computer system from the outside (col 3, ln 49-54);

measuring a response or a throughput outside the computer system while the

load is given to the computer system (col 4, ln 61-64; col 6, ln 38-53);

measuring a resource situation inside the computer system while the load is

given to the computer system (col 6, ln 38-53); and

determining a load monitoring condition used for the load monitoring of the

computer system from the amount of load given to the computer system from the

outside, the results of measuring the response or throughput and the results of

measuring the resource situation inside the computer system (col 7, In 56 – col 8, In 28);

and

setting the load monitoring condition determined by causing the computer for

determining the load monitoring condition to execute the steps and using the set load

monitoring condition so as to perform the load monitoring of the computer system (col 6,

In 54-62).

With respect to claims 2 and 8, Smocha teaches all the limitations of parent

claims 1 and 7 wherein the load monitoring condition includes at least information on a

monitoring item indicating which item of which resource should be monitored and a

threshold to be used for monitoring of the monitoring item (col 12, In 29-39); and

the step of determining the load monitoring condition includes the steps of (col 3,

In 8-32):

relating the load given from the outside to the results of measuring the resource

situation inside the computer system (col 3, In 36-39; col 10, In 1-5),

thereby detecting a resource item having responded well to the load (col 11, In

50-62),

rendering the resource item as the monitoring item (col 12, In 16-23), and

determining the threshold as a criterion for monitoring the resource item by any

of means of marginal performance (col 12, In 7-15) or throughput (col 6, In 48-53) or

physical limitation of the resource based on the results of measuring the resource

situation (col 6, ln 35-37, ln 54-58).

With respect to claims 4 and 10, Smocha teaches the limitations of parent claims

1 and 7 wherein the step of determining the load monitoring condition includes the steps

of (col 3, ln 8-32):

presenting, to a system administrator, information on the amount of load given to

the computer system, the results of measuring the response or throughput and the

results of measuring the resource situation inside the computer system (col 12, ln 16-

39); and

having a part or all of the load monitoring conditions optimum for load monitoring

of the computer system selected by the system administrator and setting the selected

information as the load monitoring conditions (col 4, ln 55-64; col 12, ln 16-39).

With respect to claim 5, Smocha teaches a load monitoring condition

determination system for determining a load monitoring condition for performing load

monitoring of a computer system comprised of one computer or a plurality of computers,

wherein the system comprises (col 3, ln 8-32),;

load generating means for giving a load to the computer system (Fig. 1: 170; col

3, ln 49-54; col 4, ln 47-54);

external response and throughput measuring means for measuring a response or

a throughput of the computer system while giving the load to the computer system (col

4, ln 61-64; col 6, ln 38-53); and

load monitoring condition judgment support means for determining a load

monitoring condition used for load monitoring of the computer system from the amount

of load given to the computer system (Fig. 1: 190; col 8, In 13-17), the results of

measuring the response or throughput (col 5, In 7-11) and the results of measuring the

resource situation inside the computer system while giving the load to the computer

system (col 6, In 38-53); and

threshold monitoring means for performing the load monitoring of the computer

system by using the determined load monitoring condition (col 11, In 50-62).

Claim Rejections - 35 USC § 103

14.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

15.   Claims 3, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Smocha et al. (US Patent 6,694,288) in view of Bertram et al. (US Patent

6,470,464) (hereinafter "Bertram").

With respect to claims 3 and 9, Smocha teaches the limitations of parent claims 2

and 8 wherein the step of determining the threshold includes the steps of: in the case

where the results of measuring the response or throughput show the marginal

performance, determining the threshold based on the results of measuring the resource

situation of the monitoring item at that time (col 12, In 7-23); and

in the case where the resource determined as the monitoring item shows

physical limitation, determining the threshold based on the physical limitation (col 6, ln

54-63). Smocha does not teach predicting values. Bertram teaches that if the results of

measuring the response or throughput do not show the marginal performance and the

resource determined as the monitoring item does not show the physical limitation

(Bertram: col 5, ln 56-65), predicting the marginal performance of the response or

throughput from the results of measuring the response or throughput (Bertram: col 10,

ln 41-54), predicting the resource situation of the monitoring item at the predicted

marginal performance of the response or throughput from the results of measuring the

resource situation inside the computer system (Bertram: col 10, ln 55-58), and

determining the threshold based on the predicted resource situation (Bertram: col 11, ln

23-37). It would have been obvious to one of ordinary skill in the art at the time of the

invention to modify the teachings of Smocha to include the prediction model of Bertram

et al. because predicting a resource situation will allow the system to produce warnings

to be sent to the user to enable them to improve the computer system (Bertram: col 3, ln

27-34, col 9, ln 48-56)

With respect to claim 6, Smocha teaches parent claim 5 as shown above wherein

the load monitoring condition includes at least information on a monitoring item

indicating which item of which resource should be monitored and a threshold to be used

for monitoring of the monitoring item (col 12, ln 29-39); and

the load monitoring condition judgment support means comprises the means for

(col 3, ln 8-32):

detecting a resource item having responded well to the load given from the

outside of the computer system from the results of measuring the resource situation

inside the computer system (col 3, ln 36-39; col 10, ln 1-5);

determining the detected resource item having responded well as the monitoring

item (col 11, ln 50-62);

in the case where the results of measuring the response or throughput show the

marginal performance, determining the threshold based on the results of measuring the

resource situation of the monitoring item at that time (col 12, ln 7-23); and

in the case where the resource determined as the monitoring item shows

physical limitation, determining the threshold based on the physical limitation (col 6, ln

54-63). Smocha does not teach predicting values. Bertram teaches that if the results of

measuring the response or throughput do not show the marginal performance and the

resource determined as the monitoring item does not show the physical limitation

(Bertram: col 5, ln 56-65), predicting the marginal performance of the response or

throughput from the results of measuring the response or throughput (Bertram: col 10,

ln 41-54), predicting the resource situation of the monitoring item at the predicted

marginal performance of the response or throughput from the results of measuring the

resource situation inside the computer system (Bertram: col 10, ln 55-58), and

determining the threshold based on the predicted resource situation (Bertram: col 11, ln

23-37). It would have been obvious to one of ordinary skill in the art at the time of the

invention to modify the teachings of Smocha to include the prediction model of Bertram

et al. because predicting a resource situation will allow the system to produce warnings

to be sent to the user to enable them to improve the computer system (Bertram: col 3, ln 27-34, col 9, ln 48-56)

Conclusion

16.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hemker et al. (US Patent 5,956,662) discloses a method for load measurement.

Sherman et al. (US Patent 6,434,513) discloses a method of load testing web applications based on performance goal.

Myers (US Patent 6,601,020) discloses a system of load testing coordination over a network.

Scarlat et al. (US Patent 6,477,483) discloses a system for load testing a transactional server over the internet.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet Robbins whose telephone number is 571-272-8584. The examiner can normally be reached on weekdays from 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Janet Robbins
23 September 2005

MARC S. HOFF
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